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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/022,528	12/20/2001	Paul Wurzinger	016790-0446	2160

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FOLEY AND LARDNER  
SUITE 500  
3000 K STREET NW  
WASHINGTON, DC 20007

EXAMINER

CASTELLANO, STEPHEN J

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 03/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/022,528

Applicant(s)

WURZINGER, PAUL

Examiner

Stephen J. Castellano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 5,13,16 and 17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-12, 14 and 15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_ 6) ☐ Other: \_\_\_\_

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Claims 5, 13 16 and 17 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected specie, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 6.

*omit* Claims 1-4, 6-12, 14 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

*omit* Claim 1 is indefinite because the statement that at least one of the shaped parts comprises a diamond is indefinite because the description of a diamond doesn't specify whether a particular material or particular shape is being indicated. Also, the material of a diamond is in and of itself, indefinite. Diamond is carbon having a crystalline form. Many diamonds have impurities. When a diamond material is specified, the true chemical composition is somewhat unknown since different crystalline forms, different impurities as well as, different levels of impurities would be present.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 8-12, 14 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Radtke ('618).

Radtke discloses a specimen holder for water-containing specimens for high-pressure freezing, the holder comprises at least two shaped parts (a first part being the lowermost part which has a cavity 6 and a second part can be defined by either tubular body 2 or drill collar 4 or

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both of these parts) detachably joinable to one another (by threaded connections such as 3), wherein the joined shaped parts form a receptacle for holding a specimen, wherein at least one of the shaped parts comprises a diamond (the first part having cavity 6 has several disc shaped cutting elements 26, each element 26 is a sintered carbide disc having a cutting surface 27 comprising polycrystalline diamond).

Regarding claim 9, the CVD limitation is believed to refer to a chemical vapor deposition process which doesn't structurally modify the diamond.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 6-12, 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Radtke.

Radtke discloses a drill bit inherently capable of holding a specimen, drill collar (4) represents a shaped part, tubular body (2) represents a shaped part and the distal part having cavity (6) represents a shaped part.

For claims 4, 11 and 15, Radtke discloses the invention except for the parts of the drill collar (4) and the distal part having cavity (6) both being considered or consisting of disk-shaped diamonds. Radtke teaches a part (lowermost part having cavity 6) which includes diamonds which are hard enough to cut rock and durable enough to prevent wear to the lowermost part. It would have been obvious to modify both parts to be disk-shaped diamonds in order to provide a more durable, wear resistant and abrasion resistant material than metal.

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For claim 7, the spacer ring material of gold, aluminum and copper is not specified.

Gold, aluminum and copper are well known spacer materials. It would have been obvious to use gold, aluminum or copper as a spacing material because of its good thermal conducting properties in order to keep the temperature inside of the drill bit and outside of the drill bit consistent.

Claims 1-4, 7-12 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kim.

Kim discloses a segmented container made of three shaped parts.

For claims 4, 11 and 15, Kim discloses the invention except for the top and bottom parts being considered or consisting of disk-shaped diamonds. The use of diamonds as a durable, wear resistant material is well known. It would have been obvious to modify both parts to be disk-shaped diamonds in order to provide a more durable, wear resistant and abrasion resistant material than metal.

For claim 7, the spacer ring material of gold, aluminum and copper is not specified.

Gold, aluminum and copper are well known spacer materials. It would have been obvious to use gold, aluminum or copper as a spacing material because of its good thermal conducting properties in order to keep the temperature inside of the drill bit and outside of the drill bit consistent.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**


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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 703-308-1035. The examiner can normally be reached on M-Th 6:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

  
Stephen J. Castellano  
Primary Examiner  
Art Unit 3727

sjc  
March 3, 2003